

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALASKA AIRLINES, INC.,

Plaintiff,

v.

JUDY SCHURKE, et al.,

Defendants,

and

ASSOCIATION OF FLIGHT  
ATTENDANTS –  
COMMUNICATION WORKERS OF  
AMERICA, AFL-CIO,

Intervenor.

CASE NO. C11-0616JLR

ORDER DENYING  
INTERVENOR ASSOCIATION  
OF FLIGHT ATTENDANTS’  
MOTION TO DISMISS OR STAY

**I. INTRODUCTION**

Before the court is Intervenor Association of Flight Attendants – Communication Workers of America, AFL-CIO’s (“AFA”) motion to dismiss or stay. (AFA Mot. (Dkt #

74.) This is a preemption case arising out of a dispute between Plaintiff Alaska Airlines Inc. (“Alaska”) and the Washington State Department of Labor and Industries (“the Department”). (1st Am. Compl. (Dkt. # 49) ¶ 3.) The Department investigated complaints filed by Alaska flight attendants, who alleged that Alaska violated a state family medical leave statute. (*Id.* ¶ 28.) Alaska filed this complaint seeking declaratory and injunctive relief, arguing that federal collective bargaining law preempts state enforcement of this leave statute. (*Id.* ¶ 3.) According to Alaska, flight attendant complaints about compliance with state leave statutes should be resolved by procedures established in the collective bargaining agreement between Alaska and AFA, not by the Department. (*Id.* ¶¶ 13, 14.)

AFA asks the court to dismiss or stay this action pursuant to the abstention principles from *Younger v. Harris*, 401 U.S. 37 (1971), *Brillhart v. Excess Insurance Co. of America*, 316 U.S. 491 (1942), and *Colorado River Conservation District v. United States*, 424 U.S. 800 (1976). (AFA Mot. at 2.) Federal courts generally abstain and refuse to hear cases out of respect for ongoing state proceedings. *See Younger*, 401 U.S. at 44-45. Abstention reflects a commitment to comity, federalism, and judicial economy. *Id.* In this case, AFA asks the court to dismiss under the *Younger* abstention doctrine, arguing that Alaska improperly seeks to enjoin ongoing state proceedings. (AFA Mot. at 6.) Alternatively, AFA asks the court to dismiss or stay the case under the *Brillhart-Wilton* doctrine or the *Colorado River* abstention doctrine. AFA asks the court to decline jurisdiction because the issues in parallel state proceedings are substantially the same as the issues in this federal preemption proceeding. (*Id.* at 15.) The court has considered

1 the parties' submissions filed in support of and opposition to the motion, and the  
2 applicable law. For the reasons stated below, the court DENIES the motion to dismiss or  
3 stay.

## 4 **II. BACKGROUND**

5 Under the Washington Family Care Act ("WFCA"), employees who are entitled to  
6 sick leave or other paid time off of work may use their leave to care for eligible family  
7 members. *See* RCW 49.12.265-70. The WFCA defines "sick leave or other paid time  
8 off" as "time allowed under the terms of an appropriate state law, collective bargaining  
9 agreement, or employer policy, as applicable, to an employee for illness, vacation, and  
10 personal holiday." RCW 49.12.265(5). The Department is charged with enforcing the  
11 WFCA: it investigates complaints and may issue notices of infraction if it reasonably  
12 believes the employer has failed to comply with these statutory requirements. RCW  
13 49.12.280; RCW 49.12.285.

14 During 2010, the Department began investigating complaints filed by several  
15 flight attendants who alleged Alaska violated the WFCA. (1st Am. Compl. ¶ 28.) On  
16 April 11, 2011, Alaska filed its first complaint alleging that the Department cannot  
17 enforce the WFCA against Alaska because a federal statute—the Railway Labor Act  
18 ("RLA")—preempts such enforcement. (Compl. (Dkt. #1) ¶ 3.) The court dismissed this  
19 complaint on February 14, 2012, on ripeness grounds, holding it could not conduct a  
20 case-by-case preemption analysis because no actual employee's complaint was before the  
21 court. (*See generally*, 2/14/12 Order (Dkt. # 47).) Alaska filed an amended complaint on  
22 March 14, 2012, this time challenging Department enforcement of the WFCA with

1 respect to a specific employee: Laura Masserant. (1st Am. Compl. ¶¶ 15-25) Ms.  
2 Masserant is a flight attendant with Alaska and was President of the AFA Local  
3 Executive Council at this time. (*Id.* ¶ 16.) The court granted the AFA leave to intervene  
4 in this action on February 25, 2013. (2/25/13 Order (Dkt. # 70) at 1.)

5 Ms. Masserant filed a complaint with the Department on June 16, 2011, alleging  
6 that Alaska violated the WFLA by denying her sick leave with pay to care for her sick  
7 child. (1st Am. Compl. ¶ 15.) The Department began investigating Ms. Masserant's  
8 claims in June 2011, but did not issue a notice of infraction against Alaska until May 31,  
9 2012, over a month after Alaska filed its amended complaint with this court. (AFA Mot.  
10 at 3.) On June 20, 2012, Alaska appealed the notice of infraction, making essentially the  
11 same preemption argument before an ALJ at the Washington Office of Administrative  
12 Hearings. (*Id.*)

13 Alaska and the Department, concerned about the inefficiency of litigating this  
14 federal case and the state administrative case at the same time, filed a joint motion to  
15 dismiss the hearing before the ALJ. (Alaska Resp. (Dkt # 90) at 12; Dept. Resp. (Dkt. #  
16 88) at 3.) On January 29, 2013, the ALJ agreed to dismiss the state administrative  
17 hearing because of the ongoing federal case before this court. (Alaska Resp. at 12.)  
18 Although the ALJ dismissed the state administrative hearing, the Department's notice of  
19 infraction against Alaska remains in place. (Dept. Resp. at 7.) Both the AFA (AFA Mot.  
20 at 8) and Alaska (Alaska Resp. at 12) agree that the ALJ's dismissal functions as a stay of  
21  
22

1 the state proceedings.<sup>1</sup> AFA filed this motion to dismiss or stay this federal case on  
 2 March 14, 2013, arguing that the court should abstain from the instant case because of  
 3 ongoing state proceedings. (*See generally* AFA Mot.)

### 4 **III. ANALYSIS**

5 According to AFA, the court should stay or dismiss this case in deference to  
 6 ongoing state administrative proceedings before the ALJ. As a general rule, “[a]bsent  
 7 significant countervailing interests, the federal courts are obligated to exercise their  
 8 jurisdiction.” *Walnut Props., Inc. v. City of Whittier*, 861 F.2d 1102, 1106 (9th Cir. 1988)  
 9 (quoting *World Famous Drinking Emporium v. City of Tempe*, 820 F.2d 1079, 1082 (9th  
 10 Cir. 1987)). State proceedings do not necessarily change this rule because generally “the  
 11 pendency of an action in state court is no bar to proceedings concerning the same matter”  
 12 in a federal court. *Colo. River*, 424 U.S. at 800. AFA asks the court to deviate from  
 13 these principles and abstain from this case. (AFA Mot. at 1.) For the following reasons,  
 14 the court finds abstention inappropriate, whether under *Younger*, *Brillhart*, or *Colorado*  
 15 *River*.

---

16  
 17  
 18  
 19 <sup>1</sup> Alaska and the Department entered into a stipulation to withdraw the Department’s  
 20 request for a hearing. (Decl. of Counsel in Support of Mot. (Dkt # 75) Ex. J.) In response, the  
 21 ALJ issued an Order of Dismissal Without Prejudice, striking all further hearing dates but  
 22 allowing either party to re-file an administrative appeal. (*Id.*) AFA calls this Order a “stay” of  
 the administrative proceedings because the Department’s notice of infraction remains in place.  
 (AFA Mot. at 8.) Alaska calls the Order a stay without comment. (Alaska Resp. at 12.) The  
 Department disagrees, calling the Order a dismissal. (Dept. Resp. at 6.) The court takes no  
 position on this issue, but refers to the ALJ’s order as a “stay” for consistency.

1 **A. The *Younger* Abstention Doctrine**

2 First, AFA asks the court to abstain from this case pursuant to the doctrine  
 3 articulated in *Younger v. Harris*. (AFA Mot. at 1.) Under *Younger*, federal courts may  
 4 not enjoin ongoing state proceedings under most circumstances. *Younger*, 401 U.S. at 45.  
 5 Although originally developed with respect to state criminal proceedings, *Younger*  
 6 abstention also applies to pending civil and administrative proceedings implicating  
 7 important state interests. *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457  
 8 U.S. 423, 433-34 (1982). Federal courts generally must abstain under *Younger* if state  
 9 proceedings (1) are ongoing, (2) implicate important state interest, and (3) provide an  
 10 adequate opportunity to raise federal questions. *Columbia Basin Apartment Ass’n v. City*  
 11 *of Pasco*, 268 F.3d 791, 799 (9th Cir. 2001). The Ninth Circuit Court of Appeals also  
 12 requires that (4) the federal action would effectively enjoin the state proceeding. *Potrero*  
 13 *Hills Landfill, Inc. v. Cnty. of Solano*, 657 F.3d 876, 882 (9th Cir. 2011). If a federal  
 14 court abstains under *Younger*, it must dismiss rather than stay the case. *Fresh Int’l Corp.*  
 15 *v. Agric. Labor Relations Bd.*, 805 F.2d 1353, 1356 (9th Cir. 1986).

16 The *Younger* abstention doctrine, however, rests on notions of comity, federalism,  
 17 and respect for pending state proceedings. *Id.* (quoting *Middlesex*, 457 U.S. at 431  
 18 (1982)). It is jurisprudential rather than jurisdictional, arising from “strong policies  
 19 counseling against the exercise” of federal jurisdiction rather than a “lack of jurisdiction  
 20 in the District Court.” *Ohio Civil Rights Comm’n v. Dayton Christian Sch., Inc.*, 477  
 21 U.S. 619, 626 (1986). Consequently, a state may forego a tenable abstention claim and  
 22

1 submit to adjudication in a federal forum. *Id.* This sort of situation does not raise  
2 federalism and comity concerns, and thus federal courts need not abstain:

3       It may not be argued, however, that a federal court is compelled to abstain  
4       in every such situation. If the State voluntarily chooses to submit to a  
5       federal forum, principles of comity do not demand that the federal court  
6       force the case back into the State's own system.

7       *Ohio Bureau of Emp't Servs. v. Hodory*, 431 U.S. 471, 480 (1977). In other words, a  
8       court need not reach the merits of a *Younger* claim when a state voluntarily submits to the  
9       suit. *Id.* at 480 n.10. (holding that where a state "voluntarily chooses to submit to a  
10       federal forum" the Court need not address *Younger* abstention); *Kleenwell Biohazard*  
11       *Waste & Gen. Ecology Consultants v. Nelson*, 48 F.3d 391, 394 (9th Cir. 1995) (declining  
12       to reach the merits of a *Younger* claim when a state has voluntarily submitted to the  
13       federal case).

14       Indeed, a state waives its *Younger* challenge, consenting to a federal forum, when  
15       it "expressly urge[s]" the federal court to proceed. *Dayton*, 477 U.S. at 626. The Ninth  
16       Circuit has stated in dicta that a state does not waive *Younger* by merely failing to raise  
17       the issue. *Boardman v. Estelle*, 957 F.2d 1523, 1535 (9th Cir. 1992) (per curiam); *but see*  
18       *Kleenwell*, 48 F.3d at 394 (declining to address defendant state agency's *Younger*  
19       argument because "the Commission did not raise this issue before the district court" and  
20       thus voluntarily submitted to federal jurisdiction). As explained below, in this case the  
21       Department went beyond failing to argue *Younger*.

22       First, the Department agreed to stop proceedings in state court. The Department  
23       expressly urged federal resolution of this case by asking the ALJ to stay the state

administrative proceedings to avoid duplicative litigation. (Dept. Resp. at 3.) The Ninth Circuit concluded in *Walnut Properties* that *Younger* federalism concerns “are not present when a state court has stayed its own proceedings pending resolution of the case in a federal forum.” 861 F.2d at 1107.<sup>2</sup> Had the Department argued for *Younger* abstention, the fact that it previously agreed to stay the state administrative hearing might be less convincing. See *Columbia Basin*, 268 F.3d at 800 (holding that the City did not waive its subsequent *Younger* abstention claim by stipulating to stay the state case). However, the fact that the Department did not raise *Younger* and also agreed to stay the state case suggests this case does not raise the comity concerns underlying *Younger*. See *Walnut Props.*, 861 F.2d at 1107.

Second, the Department declined the opportunity to argue in favor of *Younger* abstention. The Department expressly urged the court to hear this case because it does not raise *Younger* before the court, and argues against *Younger* abstention in its response

---

<sup>2</sup> In their briefing, Alaska and AFA discuss *Walnut Properties* and another case, *San Remo Hotel v. City of San Francisco*, 145 F.3d 1095 (9th Cir. 1998), when evaluating whether there is an ongoing state proceeding—the first part of the *Younger* test. (Alaska Resp. at 13; AFA Reply (Dkt. # 91) at 7.) As the parties point out, the cases reach different conclusions about whether stayed state proceedings are “ongoing” for *Younger* purposes. Compare *Walnut Props.*, 861 F.2d at 1106-07 (concluding state court proceedings were not “ongoing” when the parties agreed to stay the case pending resolution of the federal proceedings) with *San Remo Hotel*, 145 F.3d at 1104 (“Because the whole point of *Younger* abstention is to stop federal interference with state proceedings, it seems backwards to reject abstention because the state proceedings have been stayed to allow the federal case to proceed.”); see also *Columbia Basin*, 268 F.3d at 800 (recognizing the tension between *Walnut Properties* and *San Remo Hotel*). As explained in this section, because the state has expressly urged the court to proceed with Alaska’s preemption action, the court need not decide whether the stayed state proceedings were “ongoing” in this case. *Ohio Bureau of Emp’t Servs.*, 431 U.S. at 480 n.10. The court thus declines to address the differences between *Walnut Properties* and *San Remo Hotel* with respect to the merits of a *Younger* claim.

1 to AFA's motion to dismiss. (Dept. Resp. at 4 (arguing that *Younger* abstention is  
2 inappropriate because there is no ongoing state proceeding).) A state actively opposing  
3 abstention "allays any concerns of offending comity." *Potrero Hills*, 657 F.3d at 888  
4 (declining to abstain when private intervenors raised a *Younger* claim but the state  
5 opposed abstention and sought federal adjudication of the case); *see also Sonsa v. Iowa*,  
6 419 U.S. 393, 396 n.3 (declining to consider *Younger* abstention when, in response to the  
7 Court's request to brief the issue, both parties argued against abstention). *Younger*  
8 abstention is inappropriate when the state itself encourages federal resolution of a case,  
9 even though other parties might argue for abstention. *Potrero Hills*, 657 F.3d at 888; *see*  
10 *also Ohio Bureau of Emp't Servs.*, 431 U.S. at 477-78 (declining to reach the merits of a  
11 *Younger* claim raised by amicus briefs when the state did not raise *Younger* on appeal);  
12 *Brown v. Hotel & Rest. Emps.*, 468 U.S. 491, 500 n.9 (1984) (refusing to address a state  
13 agency's *Younger* abstention claim when the state Attorney General "submit[ted] to the  
14 jurisdiction of this Court in order to obtain a more expeditious and final resolution of the  
15 merits of the constitutional issue").

16 *Younger* abstention exists to prevent undue "interfere[ence] with the legitimate  
17 activities of the States"; it is not a doctrine private parties can invoke to "force [a] case  
18 back into the State's own system." *See Ohio Bureau of Emp't Servs.*, 431 U.S. at 479.  
19 Because the Department has expressly urged the court to proceed, the court declines to  
20 abstain under the *Younger* doctrine and will not address the merits of AFA's *Younger*  
21 claim.  
22

**B. The *Brillhart-Wilton* Doctrine**

District courts have broad discretion to stay or dismiss actions seeking declaratory judgment, as recognized in *Brillhart* and *Wilton v. Seven Falls Company*. *Brillhart*, 316 U.S. at 495; *Wilton v. Seven Falls Co.*, 515 U.S. 277, 287 (1995); *see also* 28 U.S.C. § 2201 (federal courts “*may* declare the rights and other legal relations of any interested party seeking such declaration” (emphasis added)). The *Brillhart-Wilton* doctrine rests on concerns about judicial economy and cooperative federalism. *Brillhart*, 316 U.S. at 495. In light of this purpose, district courts consider three primary factors when evaluating whether to entertain a declaratory judgment action: “[1] avoiding ‘needless determination of state law issues’; [2] discouraging ‘forum shopping’; and [3] avoiding ‘duplicative litigation.’” *R.R. St. & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 975 (9th Cir. 2011) (quoting *Gov’t Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1224 (9th Cir. 1998)).

**1. Needlessly Determining State Law Issues**

First, courts decline jurisdiction under the Declaratory Judgment Act in order to avoid needlessly determining state law issues. *Id.* District courts appropriately avoid determining state law when: state and federal cases raise the same “precise state law issues,” state law provides the rule of decision, and the federal case involves an area of law expressly left to the states. *Cont’l Cas. Co. v. Robsac Indus.*, 947 F.2d 1367, 1371 (9th Cir. 1991). This factor counsels against exercising jurisdiction when “no compelling federal interests are at stake.” *Transamerica Occidental Life Ins. Co. v. Digregorio*, 811 F.2d 1249, 1255 (9th Cir. 1987); *see also Robsac*, 947 F.2d at 1371.

1 AFA argues that the court should stay or dismiss under *Brillhart* because (1)  
2 Alaska raised the same RLA preemption argument in the state proceedings before the  
3 ALJ and (2) both the state and federal proceedings require determining state law issues.  
4 (AFA Mot. at 17.) According to AFA, “[t]he state court should be given the opportunity  
5 to construe the WFCA in a manner which does not violate” federal law “and the federal  
6 court should not, in this action, needlessly determine those state law issues.” (*Id.* (citing  
7 *R.R. St. & Co.*, 656 F.3d at 975).) AFA cites *Railroad Street* and another case,  
8 *International Association of Entrepreneurs of America v. Angoff*, 59 F.3d 1266 (8th Cir.  
9 1995), when making this argument. (AFA Mot. at 17.) The court disagrees, and finds  
10 these cases unpersuasive.

11 In *International Association of Entrepreneurs*, the Eighth Circuit Court of Appeals  
12 upheld the district court’s decision to decline jurisdiction over plaintiff’s preemption  
13 action. *Int’l Ass’n of Entrepreneurs of Am.*, 58 F.3d at 1270. However, the district court  
14 applied *Brillhart* because the plaintiff improperly engaged in forum shopping, not  
15 because the case required determining state law. *Id.* at 1270. The Eighth Circuit  
16 affirmed the district court’s decision to decline jurisdiction on the basis of forum  
17 shopping. *Id.* at 1270. The court never mentioned determining state law issues, and did  
18 not rely on this factor in its *Brillhart* analysis. *Id.* *International Association of*  
19 *Entrepreneurs* in no way advances AFA’s argument that this court should stay or dismiss  
20 to avoid needlessly determining state law issues because neither the district court nor the  
21 Eighth Circuit discussed determining state law as a basis for declining jurisdiction.  
22

1 AFA's reliance on *Railroad Street* is similarly misplaced because, unlike the  
 2 present case, *Railroad Street* only involved state law issues. *See R.R. St. & Co.*, 656 F.3d  
 3 at 971-73. *Railroad Street*, like *Brillhart* and *Wilton*, was an insurance case brought in  
 4 federal court pursuant to diversity jurisdiction. *Id.* at 973; *Brillhart*, 316 U.S. at 493;  
 5 *Wilton*, 515 U.S. at 280. State law supplied the rule of decision, the parties exclusively  
 6 raised state law issues, *R.R. St. & Co.*, 656 F.3d at 971-73, and regulating insurance is an  
 7 area of law Congress has expressly left to the states, *see Robsac*, 947 F.2d 1367 (citing 15  
 8 U.S.C. §§ 1011-12 (1988)) (noting that "this case involves insurance law, an area that  
 9 Congress has expressly left to the states through the McCarran-Ferguson Act."). By  
 10 contrast, the present action is not a diversity case in which the court applies state  
 11 substantive law, and Congress has not expressly left RLA preemption to the states.  
 12 Alaska's action raises "compelling federal interests" because it requires the court to  
 13 determine the scope of a federal statute, which will provide the rule of decision in this  
 14 case. Thus, contrary to AFA's contention, the court does not needlessly decide state law  
 15 issues by proceeding with this federal preemption action.<sup>3</sup> *See Digregorio*, 811 F.2d at

---

17 <sup>3</sup> In its response to AFA's motion to dismiss, the Department argues that the court should  
 18 grant its motion for summary judgment. (Dept. Resp. at 8.) Alternatively, if the court denies the  
 19 Department's motion for summary judgment because the court must interpret state law, the  
 20 Department argues that the court should stay the case under *Brillhart*:

19 Although the Department believes that [the WFCA] is clear on its face and this  
 20 Court should grant summary judgment for the Department, if this Court believes  
 21 it needs to engage in interpretation of the state law, it should grant AFA's motion  
 22 and the parties can initiate proceedings at [the Office of Administrative Hearings].  
 (Dept. Resp. at 8.) The court finds the Department's argument faulty in several respects. First,  
 the court would still need to interpret state law in order to find the WFCA clear on its face and  
 grant the Department's motion for summary judgment. Second, the *Brillhart-Wilton* doctrine

1 1255 (holding abstention appropriate because the issues raised “are more appropriate for  
2 state court resolution” and “[n]o compelling federal interests are at stake”).

### 3 2. Forum Shopping

4 Second, courts decline jurisdiction over actions for declaratory relief to discourage  
5 forum shopping. *R.R. St. & Co.*, 656 F.3d at 975. Congress did not intend to expand  
6 federal jurisdiction by enacting the Declaratory Judgment Act, and a plaintiff may not use  
7 this statute to bring a claim more properly raised in a pending state action. *Int’l Ass’n of*  
8 *Entrepreneurs of Am.*, 58 F.3d at 1270. For this reason, federal courts refuse to entertain  
9 reactive declaratory actions filed solely to gain a tactical advantage. *Id.* (“the Declaratory  
10 Judgment Act is not to be used either for tactical advantage by litigants or to open a new  
11 portal of entry to federal court for suits that are essentially defensive or reactive to state  
12 actions”); *R.R. St. & Co.*, 656 F.3d at 976 (quoting *Robsac*, 947 F.2d at 1371). The  
13 forum shopping analysis focuses on whether the federal case is “reactive,” but does not  
14 depend solely on timing of filing. *See Moses H. Cone Mem’l Hosp. v. Mercury Constr.*  
15 *Co.*, 460 U.S. 1, 17 n.20 (1983) (noting that “despite chronological priority of filing,” a  
16 suit may still be “a contrived, defensive reaction” to a suit in another forum).

17 Courts examine the “sequence of events” leading to a federal action to determine  
18 if a party engaged in forum shopping. *See Int’l Ass’n of Entrepreneurs of Am.*, 58 F.3d at  
19 1270. For example, the Ninth Circuit in *Robsac* found that the plaintiff engaged in forum

---

20  
21 does not require abstention whenever a court must determine state law issues. *Cf. R.R. St. & Co.*,  
22 656 F.3d at 975. As explained in this section, staying or dismissing the case is inappropriate  
under *Brillhart* because the case does not require the court to *needlessly* determine state law  
issues. *See id.*

1 shopping by filing a federal action in response to pending non-removable state court  
2 proceedings. *Robzac*, 947 F.2d at 1371. Similarly, in *International Association of*  
3 *Entrepreneurs* the plaintiff attempted to remove the state case to federal court, but filed  
4 an untimely petition. *Int’l Ass’n of Entrepreneurs of Am.*, 58 F.3d at 1268. Only after the  
5 court denied its removal petition did plaintiff file suit in federal court, and the Eighth  
6 Circuit affirmed the district court’s decision to decline jurisdiction under these  
7 circumstances. *Id.* at 1270. The district court properly did not allow plaintiff “to  
8 circumvent the removal statute’s deadline by using the Declaratory Judgment Act as a  
9 convenient and temporally unlimited back door into federal court.” *Id.*

10 AFA argues that Alaska engaged in forum shopping because Alaska filed its first  
11 amended complaint after the Department began investigating Ms. Masserant’s complaint.  
12 (AFA Mot. at 18.) The court finds little merit to AFA’s allegations. Unlike the plaintiffs  
13 in *International Association of Entrepreneurs* and *Robzac*, Alaska did not file a defensive  
14 or reactive federal action. *See Int’l Ass’n of Entrepreneurs of Am.*, 58 F.3d at 1270;  
15 *Robzac*, 947 F.2d at 1371. Alaska filed its original complaint in April 2011, two months  
16 before Ms. Masserant filed her complaint with the Department, over a year before the  
17 Department issued Alaska a notice of infraction, and nearly two years before AFA  
18 intervened in this suit. This sequence of events does not point strongly towards forum  
19 shopping because Alaska did not, for example, file this case in response to non-  
20 removable state proceedings, *see Robzac*, 947 F.2d at 1371, or after unsuccessfully  
21 attempting to remove a state case, *see Int’l Ass’n of Entrepreneurs of Am.*, 58 F.3d at  
22 1270. The forum shopping factor carries little weight where, like in the present case, one

1 party merely prefers federal resolution and another party prefers state resolution. *Huth v.*  
2 *Hartford Ins. Co.*, 298 F.3d 800, 804 (9th Cir. 2002).

3 3. Duplicative Litigation

4 Third, courts decline jurisdiction over actions for declaratory relief in order to  
5 avoid duplicative litigation. *R.R. St. & Co.*, 656 F.3d at 975. The Ninth Circuit described  
6 an example in *Railroad Street*, where it said duplicative litigation would result if  
7 retaining jurisdiction “required the district court to address the same issues of state law  
8 and policy interpretation that the state court had been grappling with for several years.”  
9 *Id.* at 976. In this case, little occurred in the state administrative proceedings before the  
10 ALJ effectively stayed the case on January 29, 2013: the Department issued Alaska a  
11 notice of infraction, Alaska appealed to the Office of Administrative Hearings, and the  
12 ALJ held status conference hearings with Alaska and the Department. (Dept. Resp. at 3.)  
13 After the state hearing stay there is little risk of piecemeal or duplicative litigation, and  
14 this factor weighs against abstention.

15 Hearing this case would not needlessly determine state law issues, encourage  
16 forum shopping, or result in duplicative litigation. The court weighs these factors and  
17 declines to stay or dismiss Alaska’s declaratory judgment action.<sup>4</sup> *See R.R. St. & Co.*,  
18 656 F.3d at 975.

---

19  
20  
21 <sup>4</sup> The court finds dismissing or staying the case inappropriate under the *Brillhart-Wilton*  
22 doctrine. Therefore, the court does not address Alaska’s argument that the court has no  
discretion to refuse to exercise jurisdiction under the Declaratory Judgment Act because Alaska  
also requests injunctive relief.

1 **C. The *Colorado River* Abstention Doctrine**

2 Last, AFA argues that the court should abstain under the *Colorado River*  
 3 abstention doctrine. (AFA Mot. at 21-24.) Courts possess less discretion to refuse to  
 4 exercise jurisdiction under the *Colorado River* abstention doctrine than under the  
 5 *Brillhart-Wilton* doctrine. *Wilton*, 515 U.S. at 285. Pending state proceedings generally  
 6 do not bar federal proceedings on the same issues because federal courts have “a virtually  
 7 unflagging obligation . . . to exercise the jurisdiction given them.” *Colo. River*, 424 U.S.  
 8 at 817. Federal courts may stay or dismiss a case under *Colorado River* for efficient  
 9 judicial administration only under “exceptional” circumstances. *Travelers Indem. Co.*,  
 10 924 F.2d 1364, 1367 (9th Cir. 1990). Any doubts must be resolved against abstention  
 11 and “[o]nly the clearest of justifications will warrant dismissal.” *Id.* at 1369 (quoting  
 12 *Colo. River*, 424 U.S. at 819).

13 In *Colorado River*, the Colorado legislature divided the state into seven water  
 14 districts and established procedures for settling water claims within those districts. 424  
 15 U.S. at 804-5. Rather than adjudicate via these procedures, the United States sued some  
 16 1,000 water users in federal court. *Id.* at 805. The Supreme Court upheld the district  
 17 court’s decision to abstain, finding that “exceptional circumstances” justified abstention  
 18 for reasons of “wise judicial administration.” *Wilton*, 515 U.S. at 284 (citing *id.* at 818-  
 19 20). In the Ninth Circuit, courts consider eight factors for determining whether to abstain  
 20 under the *Colorado River* “exceptional circumstances” test:

21 (1) which court first assumed jurisdiction over any property at stake; (2) the  
 22 inconvenience of the federal forum; (3) the desire to avoid piecemeal  
 litigation; (4) the order in which the forums obtained jurisdiction; (5)

1 whether federal law or state law provides the rule of decision on the merits;  
2 (6) whether the state court proceedings can adequately protect the rights of  
3 the federal litigants; (7) the desire to avoid forum shopping; and (8)  
4 whether the state court proceedings will resolve all issues before the federal  
5 court.

6 *R.R. St. & Co.*, 656 F.3d at 978-79 (citing *Holder v. Holder*, 305 F.3d 854, 870 (9th Cir  
7 2002)). The first two factors are irrelevant in this case because Alaska's suit does not  
8 concern a specific piece of property and both the state and federal forums are located in  
9 Washington. *Id.* at 979. Factors three and seven are also not relevant because, as  
10 discussed for the *Brillhart-Wilton* doctrine, retaining jurisdiction does not raise piecemeal  
11 litigation or forum shopping problems.

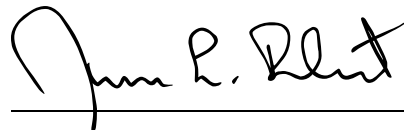
12 Moving to the rest of the *Colorado River* factors, the fourth factor weighs against  
13 abstention because Alaska filed its complaint in the federal forum before Ms. Masserant  
14 filed her complaint with the Department. Moreover, although the court will need to  
15 resolve issues of state law, the fifth factor weighs against abstention because federal law  
16 provides the rule of decision. When federal courts consider whether to surrender  
17 jurisdiction, "in some rare circumstances the presence of state-law issues may weigh in  
18 favor of that surrender" but "the presence of federal-law issues must always be a major  
19 consideration weighing against surrender." *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 26.  
20 The sixth and eighth factors weigh in favor of abstention because the state courts could  
21 resolve all the issues in this case and adequately protect Alaska's rights. *Cf. Dayton*, 477  
22 U.S. at 629 (holding *Younger* abstention appropriate in part because state court review of  
administrative hearings guaranteed plaintiffs an adequate opportunity to raise claims  
based on federal law). Despite two factors favoring abstention, on balance, and in light

1 of the court's "virtually unflagging" obligation to exercise its jurisdiction, the *Colorado*  
2 *River* factors weigh against abstention in this case.

3 **IV. CONCLUSION**

4 For all of the reasons stated above, the court DENIES Intervenor AFA's motion to  
5 dismiss or stay. (Dkt. # 74.) The court declines to dismiss Alaska's action pursuant to  
6 *Younger* abstention because the Department has expressly urged the court to proceed with  
7 this case. The court also finds staying or dismissing the case inappropriate under the  
8 *Brillhart-Wilton* doctrine because the case does not raise concerns about needlessly  
9 determining state law issues, forum shopping, or duplicative litigation. Finally, the court  
10 declines to dismiss or stay under *Colorado River* because in this case no "exceptional  
11 circumstances" overcome the court's obligation to exercise its jurisdiction.

12 Dated this 6th day of May, 2013.

13  
14 

15 JAMES L. ROBART  
16 United States District Judge  
17  
18  
19  
20  
21  
22